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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/864,967      | 05/24/2001  | Shawn P. Fojtik      | 4623US              | 3455             |

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EXAMINER

LAM, ANN Y

ART UNIT PAPER NUMBER

3763

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/864,967

Applicant(s)

FOJTIK, SHAWN P.

Examiner

Ann Y. Lam

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Langer et al., 6,004,295. Langer et al. discloses a syringe barrel (58), a plunger (40 and 38); and a handle including a first member (i.e., portion of 48 pivotally connected to 58, see Figure 5 and Figure 7A) configured to be held by a first part of a user's hand, said first member being pivotally connected to said syringe barrel; and a second member (i.e., portion of 48 pivotally connected to 40, see Figure 7A) configured to be held by a second part of a user's hand, said second member being pivotally connected to said plunger, said first and second members being connected one another in pivotal relation, see column 5, lines 40-45, and Figure 7A.

Said first and second members are secured to one another by a hinge, see column 5, lines 40-45. At least one of said first and second members comprise a slot through which said hinge extends, and said slot and said hinge include cooperating teeth, wherein said hinge and teeth of said slot mutually engage each other, see column 5, lines 40-45.

As to claim 21, the injection device is used to inject fluid, see column 2, lines 57-60.

As to claim 22, pivoting said first handle and said second handle away from one another creates a negative pressure within receptacle of syringe, see column 1, lines 22-23, and column 5, lines 40-56.

As to claim 25, the fluid is considered to be comprised of at least one gas.

As to claim 26, the injector is coupled to an angioplasty catheter that communicates with a balloon, see column 1, lines 22-25, and column 2, lines 57-60.

As to claim 27, the fluid is considered to be comprised of indicator solution.

### ***Response to Arguments***

Applicant's arguments are not persuasive. Applicant argues that a catheter is not a syringe. Examiner however asserts that the device disclosed by Langer has all the claimed elements and is considered a syringe, as claimed by Applicant. A catheter is defined by Webster's, Tenth Edition, as a tubular medical device for insertion into canals, vessels, passageways, or body cavities, usually to permit injection or withdrawal of fluids or to keep a passage open. A syringe is defined as a device used to inject fluids into or withdraw them from something. Thus, the definition of a syringe does not exclude a catheter.

Applicant also argues that Langer does not describe a plunger insertable into a receptacle of a syringe barrel. Examiner reasserts that Langer discloses such a plunger at (40 and 38).

Applicant also argues that Langer does not disclose a handle that includes a member that is connected to a plunger, but insteads discloses a member secured to a wire (40), which in turn is connected to plunger (38). Examiner asserts that the plunger constitutes (40 and 38), and in any case, the claims do not require a direct connection between the member and the plunger.

Applicant also argues that Langer does not describe a handle that is pivotally connected to a plunger, or for that matter, that is pivotally connected to wire (40). Examiner asserts that Langer describes such a handle, see column 6, lines 55-60.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on T-F 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (703)308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)306-4520 for After Final communications.

A.L.   
February 6, 2003

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
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